

VICTOR SHEPHERD

IBLA 86-1496

Decided June 3, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented lode mining claims CAMC 59829, CAMC 76641, and CAMC 95727 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void when a claimant fails to file either evidence of annual assessment work or a notice of intent to hold the claim on or before Dec. 30 of a calendar year.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

The grace period afforded by 43 CFR 3833.0-5(m) extends only to those documents delivered by the U.S. Postal Service, and does not apply to a document delivered to BLM by a private courier.

APPEARANCES: Victor H. Shepherd, Nevada City, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Victor H. Shepherd appeals from a June 26, 1986, decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims CAMC 59829, CAMC 76641, and CAMC 95727 abandoned and void for failure to file evidence of assessment work performed or a notice of intention to hold the claims with BLM on or before December 30, 1985.

In his statement of reasons, Shepherd states that rather than use the U.S. Postal Service, he used a private courier to deliver his filings. 1/

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1/ The courier appointed by appellant was the appellant.

He contends delivery by courier should be afforded the same grace period that would be granted if the documents were delivered by the U.S. Postal Service. He alleges that if this grace period is extended to him, he has filed his documents on time.

We will first address the effect of failing to file the necessary documents within the specified time. Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each calendar year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4.

Congress mandated that failure to file the proper documents in the proper office within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, if a timely filing is not made, the claim is extinguished by operation of law. It is lost even though the claimant intends to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). Congress did not provide for waiver of this mandatory requirement, and the Department has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 196, 88 I.D. 362, 372 (1981).

Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. When an annual filing is not received within the specified time period, for whatever reason, the consequence must be borne by the claimant. The purpose of section 314 is not to ensure that assessment work is performed, but to establish a record of continuing activity on the claim to afford the Federal Government a means of identifying the active mining claims on Federal lands. The fact that assessment work was done or that timely filings had been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. The statute is self-operative and the claims became abandoned when the annual filing was not timely received. See Ptarmigan Co., 91 IBLA 113 (1986).

The record contains nothing indicating that evidence of assessment work performed or notice of intention to hold these claims was filed with BLM on or before December 30, 1985. BLM properly deemed the claims to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, *supra*.

The applicable regulation, 43 CFR 3833.0-5(m), defines "filed" as received and date stamped by the proper BLM office. This definition also provides that "for the purpose of complying with | 3833.2-1, \* \* \* 'timely filed' means being filed within the time period prescribed by law, or received by January 19th after the time period prescribed by law in an

envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law." Id. Appellant asserts that BLM personnel advised him that there are no restrictions on the means by which the required documents may be delivered. This is true. A mining claimant has free choice of the means of delivery, and bears the consequences of delay or nondelivery. Guy A. Matthews, 58 IBLA 246 (1981). The grace period provided by regulation applies only when that choice is the U.S. Postal Service. The appellant chose to act in the capacity of a "duly appointed courier" and personally delivered the documents to BLM on December 31, 1985. We have no doubt that appellant selected this means of delivery believing it to be faster and more efficient than the use of the mails. However, the circumstances in this case are like those in United States v. Locke, supra, where the document was filed one day late. The claims are properly deemed abandoned and void by operation of law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge

